

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY

Application for authority to issue and : 82-0010
sell **not** to exceed \$200,000,000 **princi-** :
Pal amount of a new series of First
Mortgage Bonds.

March 8, 1982: Concurring opinion, to the order entered by the Commission on February 17, 1982, filed by Commissioner Daniel W. Rosenblum.

Commissioner Daniel **Rosenblum** concurring:

I enthusiastically support that portion of the order which puts **Commonwealth** Edison on notice that in future Section 21 proceedings it will be required to provide to the Commission an analysis of the relative costs to the ratepayer of debt and common stock as well as the cost of alternative capital structure **goals**. I support, with no enthusiasm, the decision authorizing Commonwealth Edison to issue \$200 million of debt.

When Edison was last granted approval to issue debt, in Docket **81-0728**, I filed a dissent because Edison had made no effort to demonstrate that a sale of debt properly balanced the interests of Edison **and** its ratepayers. In that dissent, I requested that Edison provide in each new financing request through completion of **its** Braidwood units, ". . . a written analysis of the present value benefits of the **type of** financing sought (if not equity) compared to an equity offering in the same amount."

Edison's response in this proceeding was to provide none of the requested information. **In fact**, Edison's Vice-President responsible for the financial activity of the company stated that he did not know how to do the revenue requirements of the financing plan, and that it is not really possible to determine revenue requirements for alternative financing plans. **(R78)** while the Vice-President may not know how to compare the revenue requirements of alternative financing plans, the exhibits placed in the record **on** very short notice by a **Commission** staff witness leave no question but that such a comparison is possible.

I will vote to authorize the bond sale, despite Edison's refusal to provide the requested information. while Edison's proof did not satisfy the standard which I described in Docket 81-0728, Edison did satisfy the standard set by a four-person majority of the Commission in that Docket. Edison could reasonably rely **on the** previous majority, action. While I would have preferred requiring further evidence from Edison in this case, the Company's need for financial flexibility and the likelihood that an adequate study would create a long delay, necessitate **that such proof be** required in the next financing. A long delay in this financing could increase costs to the ratepayer, which would obviously be counterproductive. And, if I understand Commissioner Barrett's dissent correctly, all five Commissioners now require the analysis I originally suggested in Docket 81-0728.

The Commission has taken a very significant step in recognizing that Section 21 financing dockets require an analysis of the effects of **the** proposed financing and alternative financing programs on ratepayers. The Commission will now be better able to balance the interest of Edison's shareholders and their **rate-** payers. Edison should understand that in the future if the proper balance is not demonstrated, as it was not in this case, Edison can expect its financing application to be rejected.

My dissent in Docket 81-0728 stated why it is necessary to balance the interests of Edison and **its ratepayers**:

The balancing of interests on a financing must be analyzed in connection with the balancing of interests in rate cases. Since the Commission's use of interest coverage methods in rate cases requires rate relief **when** interest coverages drop below a certain **level**, in order to maintain the Company's financial integrity, the Commission should make every effort to balance interests before that point is reached. The Commission should **not** approve a financing of debt unless and until it finds that the sale of debt properly balances the long range interests of both ratepayers and stockholders. The proper balancing of interest might well show that a sale of equity, even with the dilution which would result, would be the proper balance. The balancing must be done at the time **financings** are approved since the Commission loses flexibility by the time interest **coverages** have dropped and interim relief is requested.

Since the necessary balancing has not been done in this proceeding or in Docket 81-0728, it will be necessary to examine the issue in Edison's pending rate case. In other words, approval of this financing and that in Docket El-0728 should not and does not **restrict** the Commission's flexibility. The Commission's public discussion of this case, both in Chicago and Springfield, indicated that the Commission does not intend to commit itself to interest **coverage** regulation. If that is true, and I hope it is, the message to Edison is that this sale of debt is at Edison's risk. Based on my sense of the Commission's past decision making, however, I continue to fear that we will rely primarily upon interest coverage regulation.

The record in this proceeding suggests there is a real question whether the bond sale at issue is not contrary to the public interest. Staff's Exhibits indicate that when a capital structure with a higher equity ratio is **compared** to that proposed by Edison, and: when interest coverage rather than rate of return is held constant, the result is that the higher equity ratio capital structure requires less revenue. Since interest coverage has been a factor in recent **major** rate cases, and since the Commission has stated that rate of return on equity should vary with a utility's performance, it is reasonable for comparison **purposes** to hold interest coverages constant. While the Staff exhibits are not conclusive, they do suggest that a thicker debt ratio combined with interest coverage regulation provides a higher return on equity at any one coverage than a thinner debt ratio. In **other words**, what is in Edison's best short run interest is not **necessarily** in the ratepayers' best interest. If Edison is convinced that this Commission has been providing rate relief based mainly on interest coverages, it has an incentive to maintain a low interest coverage which then becomes the basis of rate relief. It may not be coincidental that Edison plans four major debt issues prior to the time that the statutory period ends on Edison's pending rate case.

Edison has an incentive to issue debt whenever possible if it can be confident that any additional interest obligations it incurs will **be** the basis for prompt rate relief. At the same time, it can **assume** that it will not have to share in the burden of its construction program since its rate of return on equity is kept high through the combination of interest coverage regulation and a thick debt ratio. The Commission, despite its desire to vary rate of return with **the** performance of the utility, ends up **having** little or no, flexibility with interest coverage **regulation**. I do not believe that the 17.5% return on equity allowed

in Edison's last rate case reflected a determination by the Commission that Edison's performance has been superlative so much as it reflected the equity return which "**fell out**" of a consideration of minimum cash **coverages** of interest to maintain a level of financial integrity. **The** ability to regulate through use of appropriate incentives is minimized when interest coverage regulation is combined with allowing Edison to determine its capital structure without careful Commission analysis. Today's decision should inform Edison that the Commission intends to reassert complete jurisdiction over rates by beginning to properly analyze capital structure before it becomes non-optimal.

The above discussion has focused on capital structure and its effect on, interest coverages and rates. **Intervenors** have taken the analysis one step further and have indicated that a specific financing cannot be isolated from a company's total financing package, and that the financial feasibility of that entire financing program must be considered by the Commission with a determination made whether that program **is** reasonable and in the public' interest. **Intervenors** have demonstrated that **because of the escalating costs** of Edison's construction program **and, thus, its financing program**, there is reason to **question** whether the financing program is affordable. At a time when government **and private** corporations are cutting back, the **ques-**tion properly arises whether Edison should be allowed to assume the resources of its customers are unlimited.

The evidence in this proceeding leaves two important issues for future consideration. First, is Edison's construction program affordable? Second, if Edison's construction program is affordable, should Edison's shareholders pay for a larger share of that program through increased stock sales and equity returns which ^{more} accurately reflect the Company's management performance? These issues must be considered in Edison's pending rate case or in a separate proceeding.

Note: After preparation of this concurring opinion I have learned that Standard & Poor's had reduced the rating on Edison's first mortgage bonds from A- to BBB+. Standard & Poor's stated:

The rating reductions reflects Commonwealth Edison Company's continued weak level and quality of fixed charge coverage, resulting primarily from its heavy construction program. Financial flexibility remains impaired by a highly leveraged capital structure and the need for interim rate relief to enable the company to meet external financing requirements.

Standard & Poor's action only highlights the need to thoroughly analyze Edison's capital structure and financing requirements.

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON
COMPANY,

Petition for an order pursuant to Section
10-1 13 of the Public Utilities Act for relief
from certain requirements of an Order
entered in 1982.

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No. 00-_____

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DRAFT ORDER

By the Commission:

On March 7, 2000, Commonwealth Edison Company ("ComEd") filed with the Illinois Commerce Commission ("Commission") its Verified Petition, pursuant to Section 10-1 13 of the Public Utilities Act (the "Act") (220 ILCS 5/10-113), for an order terminating the requirement that ComEd make the showings prescribed by Appendix A to the Commission's Order in Docket 82-0010 (the "Appendix A Requirements").

ComEd is an Illinois corporation organized and existing under the laws of the State of Illinois with its principal office in Chicago, Illinois, ComEd and is engaged in supplying electric service to the public in the northern part of Illinois with authority under its Restated Articles of Incorporation, as amended, to do so. ComEd is a public utility within the meaning of Section 3-105 of the Act. See 220 ILCS 5/3-105.

On or about January 7, 1982, ComEd tiled a petition requesting Commission approval to issue up to \$200,000,000 principal amount of first mortgage bonds. The petition was docketed as No. 82-0010.

In February, 1982, the Commission entered an Order in Docket No. 82-0010 which granted the' requested authority, but also imposed on ComEd the Appendix A Requirements. A copy of that order including Appendix A and the dissenting opinion of Commissioner Barrett filed therewith was attached to the Verified Petition. A copy of the subsequently filed concurring opinion of Commissioner Rosenblum was also attached to the Verified Petition.

In general, the Appendix A Requirements directed ComEd to make a series of showings regarding an "optimal" capital structure for the company. The overall "optimal" structure is to be the subject of a required annual filing. Additional provisions of the Appendix A

Requirements direct that certain showings be made with every filing for authority to issue securities. These showings include:

Statements of ComEd's "then current capital structure, with and without short-term debt outstanding, In connection therewith, [ComEd shall identify and discuss the factors which preclude the immediate establishment of the optimal capital structure[;]"

"a description of [ComEd's] planned schedule for reaching the optimal capital structure. This section should also include a description of alternative schedules to achieve the target capital proportions, as well as a discussion of why the planned schedule is preferable[;]"

statements of "the effects of the proposed amount and type of financing upon the current capital structure, the coverage ratios (measured by all relevant methods), and any other relevant effects of the financing upon [ComEd's] overall financial health and integrity[;]"

statements of "the procedures used, the rationale and a description of how the type and terms of the proposed financing as described in Section IV were determined. The description of when the financial terms were determined should include a listing of specific dates when specific activities took place. These activities should include a chronological listing of the events which actually determined the form and type of the financing. The description of how the financial terms were determined should include in more detail the result of the specific activities listed which determined the exact form and type of the financing[;]"

statements of "alternative proposals which were examined in the process of deciding the form of the financing and a complete explanation as to why each alternative proposal was rejected. The alternative proposals should be described and numerically presented as to overall effects on the capital structure, interest coverage ratios, and overall financial integrity the rejection of each alternative proposal should be explained in terms of the specific analytical and objective evidence which became the dominant rejection criteria[;]"

"an analysis of the present value of the revenue requirements under alternative financing; equity if debt is to be offered; and debt if equity is to be offered[;]" and

statements of “[a]lternative revenue requirement scenarios assuming a variety of bond ratings and relevant coverage ratios[.]”

Order, Ill. CC. Dkt. 82-0010, App. A at 1-2 (emphasis in original).

The Appendix A Requirements are burdensome and costly to ComEd. ComEd believes that the corresponding Commission staff review is also burdensome and costly to the Commission. The Appendix A Requirements apply only to ComEd. No other utility is subject to the Appendix A Requirements. Moreover, the conditions that lead to imposition of the Appendix A Requirements no longer exist,

The conditions that led to imposition of the Appendix A Requirements included:

the need to finance construction of 6 nuclear units, LaSalle 1 and 2, Byron 1 and 2 and Braidwood 1 and 2 (the “Nuclear Units”);

substantial rate increase requests tiled on an approximately annual basis;

the perception that these rate increase requests were driven, at least in part, by the need to have revenues sufficient to meet the interest coverage requirements of the indenture governing ComEd’s mortgage bonds (see Ill. CC. Dkt. 82-0010, concurring opinion of Commissioner Rosenblum at 1; dissenting opinion of Commissioner Barrett at 2); and

interest rates approaching 20% for first mortgage bonds.

Under Section 10-1 13 of the Act, ComEd is entitled to seek relief from the Appendix A Requirements by “tiling a petition setting up a new and different state of facts after 2 years” after entry of the Order imposing the requirements, 220 ILCS 5/10-1 13.

The verified petition satisfies the requirements of Section 10-1 13. First, it has been more than two years – in fact it has been more than eighteen years – since the Order imposing the Appendix A Requirements was entered. Second, the verified petition sets up a new and different state of facts and demonstrates the conditions leading to imposition of the Appendix A Requirements no longer exist, Thus:

Construction of the Nuclear Units has been completed and no new generating units are under construction by ComEd.

The provisions of the Electric Service Customer Choice and Rate Relief Law of 1997 (the “1997 Amendments”) prohibit rate increase tilings unless the utility’s earnings on common equity fall

and remain below rates on United States Treasury bonds. See 220 ILCS 5/16-111(d).

Interest rates have fallen substantially and concerns about so-called “interest coverage regulation” have been mooted by the 1997 Amendments.

Commissioner Rosenblum, the Commissioner whose concerns appear to have prompted issuance of the Appendix A Requirements, stated that these special requirements should remain in effect “through completion of [ComEd’s] Braidwood units[,]” not the indefinite future. Ill. C.C. Dkt. 82-0010, Concurring Opinion of Commissioner Rosenblum at 1.

The 1997 Amendments make continuation of the Appendix A Requirements particularly inappropriate. As stated above the repeated requests for rate increases that characterized the 1970s and 1980s are not permitted. Moreover, the 1997 Amendments introduce retail competition among suppliers of electric energy. The potential competitors for ComEd’s retail customers include the other regulated utilities in Illinois, none of which are subject to the Appendix A Requirements. The other electric suppliers with which ComEd will compete are, of course, also not subject to the Appendix A Requirements, or any form of Commission securities regulation. Thus, the Appendix A Requirements place ComEd at a disadvantage vis-a-vis its competitors.

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) ComEd is an Illinois corporation engaged in the sale and distribution of electricity to the public in Illinois and, as such, is a public utility as defined by Section 3-105 of the Act;
- (2) the Commission has jurisdiction of ComEd and the subject matter of this proceeding;
- (3) the verified petition satisfies the requirements of Section 10-113 of the Act;
- (4) the recitals of fact and law and the conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law; and
- (5) based upon the facts, including the facts arising subsequent to the entry of the Commission’s Order in Ill. CC. Dkt. 82-0010, the Appendix A Requirements are now unwarranted and it is appropriate that those requirements be rescinded.

IT IS THEREFORE ORDERED that the requirements imposed by Appendix A of the Order entered by the Commission in 111. C.C. Dkt. 82-0010 are hereby rescinded and ComEd is hereinafter relieved from complying with such requirements.

IT IS FURTHER ORDERED that subject to the provisions of Section 10- 113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this ____ day of _____, 2000.

(SIGNED)

Chairman

(SEAL)

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

VERIFICATION

Patricia L. Kampling, first being duly sworn upon her oath, deposes and says she is the Treasurer of Commonwealth Edison Company, an Illinois corporation; that she has read the above and foregoing Petition by her subscribed, and knows the contents thereof; and that the facts set forth therein are true and correct to the best of her knowledge and belief.




PATRICIA L. KAMPLING

SUBSCRIBED AND SWORN to

before me this 6th day

of March, 2000.



Notary Public



My commission expires 10/26/01